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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ED LOMONT and LUIS ANGULO,  
derivatively on behalf of nominal defendant  
Workhorse Group, Inc.

Plaintiffs,

vs.

DUANE HUGHES, STEVE SCHRADER,  
ROBERT WILLISON, STEPHEN  
FLEMING, ANTHONY FUREY,  
RAYMOND CHESS, GERALD BUDDE,  
H. BENJAMIN SAMUELS, HARRY  
DEMOTT, MICHAEL CLARK, PAMELA  
MADER, and JACQUILENE DEDO,

Defendants,

-and-

WORKHORSE GROUP, INC.,

Nominal Defendant.

**No.**

**VERIFIED SHAREHOLDER  
DERIVATIVE COMPLAINT**

Jury Trial Demanded

1 Plaintiffs Ed Lomont and Luis Angulo (“Plaintiffs”) bring this shareholder derivative  
 2 action on behalf of nominal defendant Workhorse Group, Inc. (“Workhorse” or the “Company”),  
 3 a Nevada corporation. Plaintiffs’ allegations are based upon personal knowledge as to Plaintiffs  
 4 and on information and belief as to all other matters. Plaintiffs’ information and belief is based  
 5 upon the investigation conducted by and under the supervision of counsel which included,  
 6 among other things, a review and analysis of: (a) Workhorse’s public filings with the U.S.  
 7 Securities and Exchange Commission (“SEC”); (b) articles in the news media and analyst  
 8 reports; (c) the Company’s website and press releases; (d) complaints and related materials from  
 9 other litigation involving Workhorse; and (e) applicable rules and regulations.

#### 10 **NATURE OF THE ACTION**

11 1. This is a shareholder derivative action on behalf of nominal defendant Workhorse  
 12 against certain of its current and former officers and directors seeking to remedy defendants’  
 13 breaches of fiduciary duties and for contribution and indemnification.

14 2. Workhorse builds electric delivery trucks and drone systems and is based in  
 15 Loveland, Ohio. In January 2015, the United States Postal Service (“USPS”) announced its Next  
 16 Generation Delivery Vehicle (“NGDV”) project, which aimed to replace about 165,000 aging  
 17 package delivery vehicles as part of a multi-billion dollar contract. On October 16, 2015, USPS  
 18 issued a Prototype Request for Proposal to 15 prequalified suppliers, and out of these proposals  
 19 six suppliers were chosen to create prototypes. Workhorse’s predecessor entity submitted a  
 20 proposal, but the bid was rejected because its engineers could not use the design software  
 21 mandated by USPS.

22 3. However, in order to stay in the running for the contract, Workhorse then  
 23 partnered with one of the chosen suppliers, VT Hackney, to create prototypes for testing by the  
 24 USPS in the next phase of the bidding process. VT Hackney eventually dropped out and in  
 25 November 2019 sold its right to bid on the USPS contract to Workhorse for \$7 million.

26 4. As alleged herein, Workhorse had never secured nor performed a contract as large  
 27 as the NGDV contract. In fact, for most of its existence back to 2007, Workhorse had incurred  
 28 substantial losses. As of December 31, 2020, the Company had accumulated a deficit of \$109

1 million. In addition, the Company has had significant negative cash flow from operating  
2 activities, including a negative cash flow of \$70.3 million in 2020.

3 5. Nevertheless, during the relevant period, Workhorse's officers and directors  
4 began a sustained campaign of false and misleading statements regarding the likelihood of  
5 Workhorse securing the lucrative USPS contract. They created the impression that Workhorse  
6 was a legitimate contender to do so, even while they knew that Workhorse did not have the  
7 operational nor manufacturing capacity to execute on the scale required.

8 6. Defendants' campaign of false and misleading statements regarding Workhorse's  
9 prospects caused the Company's stock price to rise dramatically. Between March of 2020 and  
10 February of 2021, Workhorse's stock price soared from just \$2 per share to over \$40 per share  
11 – a period during which the Company's officers and directors promptly sold over 2.6 million of  
12 their personal shares for proceeds of over \$61 million.

13 7. On October 8, 2020, *Fuzzy Panda Research*, a short seller research firm, issued a  
14 report entitled *The "Brakes" Fall Off The USPS Story: Workhorse's USPS Bid has Numerous*  
15 *Critical Failures*. The report revealed that the Company's partner to the NGDV bid, VT  
16 Hackney, dropped out and sold its bidding rights to Workhorse because of numerous problems  
17 with the prototype they had developed, including a parking brake failure resulting in a USPS  
18 employee being injured during testing. The report further disclosed that a purported backlog of  
19 orders for Workhorse vehicles based on other contracts was largely illusory.

20 8. On February 23, 2021, USPS announced that it was awarding the entire contract  
21 to another bidder, causing Workhorse's stock price to plummet. Analyst Wolfe Research issued  
22 a note that day explaining that "[g]iven recent indications from the Postal Service that the  
23 contract could be split between multiple OEMs, and given President Biden's new EV [electric  
24 vehicle] mandate for the Federal Fleet, investors were clearly surprised by this outcome." Wolfe  
25 Research underscored that the revelation "raise[d] questions about underlying issues with  
26 WKHS's product/technology."

27 9. The truth more fully emerged on May 10, 2021, when Workhorse announced its  
28 financial results for the first fiscal quarter ended March 31, 2021. Workhorse revealed that it had

1 only produced six vehicles in the first quarter of 2021 and 38 vehicles year-to-date. These figures  
2 made clear that the Company did not have the manufacturing capacity to even compete for the  
3 USPS contract, much less win it, and threw into doubt the Company's representations that it  
4 could execute on a backlog of orders it claimed to have from other contracts.

5 10. On or about March 8, 2021, investors seeking to recoup their losses in Workhorse  
6 stock sued Workhorse and certain of its officers and directors for violations of the federal  
7 securities laws in the U.S. District Court for the Central District of California, and a consolidated  
8 complaint was filed on July 16, 2021. By order dated December 2, 2021, U.S. District Judge  
9 Cormac J. Carney denied the motion to dismiss, holding that investors had stated actionable  
10 claims against the Workhorse defendants under the heightened pleading standards of the Private  
11 Securities Litigation Reform Act of 1995.

12 11. Judge Carney held that the class action plaintiffs alleged with particularity that  
13 the Workhorse defendants made false and misleading statements regarding the Company's  
14 ability to secure the USPS contract, its manufacturing capabilities, and the purported backlog of  
15 orders from other contracts, and that the defendants acted with scienter, or intent to defraud. The  
16 class action has exposed the Company to massive liability for securities fraud. In addition, the  
17 Company has disclosed that it has received inquiries regarding these matters from the SEC and  
18 the U.S. Department of Justice, raising the prospect of regulatory fines and penalties.

19 12. As alleged herein, Workhorse was never able to mass produce trucks, as its  
20 primary assembly facility was understaffed and had no automation. In addition, Workhorse's  
21 purported backlog consisted of conditional agreements with entities that had no fixed obligation  
22 to take delivery of the trucks. Additionally, Workhorse knew early on based on negative  
23 feedback from the USPS that the NGDV contract would likely not be awarded to Workhorse.

24 13. Shareholder value has been severely damaged by defendants' misconduct. By  
25 causing the Company to issue false and misleading statements, each defendant named herein  
26 who served as a director acted in bad faith and faces a substantial likelihood of liability for breach  
27 of fiduciary duty. Under these circumstances, any demand on the Workhorse board of directors  
28 to bring the asserted claims would be futile, and is therefore excused.



1 served as the Company's CEO since 2009. Previously, Hughes served as the Company's COO  
2 and President from August 2016 until January 2019. While in possession of material, nonpublic  
3 information concerning Workhorse's true business condition, Hughes sold 568,502 shares of  
4 stock for \$14,399,122.23 in proceeds. In 2020, Hughes earned \$450,000 in salary, \$475,000 in  
5 stock awards, and \$384,750 in non-equity incentive plan compensation.

6 23. Defendant Steve Schrader served as the Company's CFO from December 2019  
7 until September 29, 2021. While in possession of material, nonpublic information concerning  
8 Workhorse's true business condition, Schrader sold 15,152 shares of stock for \$332,131.84 in  
9 proceeds.

10 24. Defendant Robert Willison served as the Company's COO from February 19,  
11 2019 until September 30, 2021. While in possession of material, nonpublic information  
12 concerning Workhorse's true business condition, Willison sold 169,920 shares of stock for  
13 \$4,825,492.80 in proceeds.

14 25. Defendant Stephen Fleming served as the Company's Vice President and General  
15 Counsel from November 2019 until November 2021. While in possession of material, nonpublic  
16 information concerning Workhorse's true business condition, Fleming sold 304,796 shares of  
17 stock for \$6,614,781.05 in proceeds.

18 26. Defendant Anthony Furey has served as the Company's Vice President of  
19 Finance since November 2019. While in possession of material, nonpublic information  
20 concerning Workhorse's true business health, Furey sold 201,862 shares of stock for  
21 \$4,407,915.04 in proceeds.

22 27. Defendant Greg Ackerson has served as the Company's Corporate Controller and  
23 Principal Accounting Officer and joined the Company in 2018. While in possession of material,  
24 nonpublic information concerning Workhorse's true business condition, Ackerson sold 39,850  
25 shares of stock for \$965,000.00 in proceeds.

26 28. Defendant Raymond Chess has served as a director since October 2013 and as  
27 Chairman of the Board since December 2015. While in possession of material, nonpublic  
28 information concerning Workhorse's true business condition, Chess sold 68,218 shares of his

1 stock for \$1,428,218.48 in proceeds. During 2021, Chess was paid \$167,916 in director fees and  
2 stock awards.

3 29. Defendant Gerald Budde has been a director since December 2015. While in  
4 possession of material, nonpublic information concerning Workhorse's true business condition,  
5 Budde sold 60,000 shares of his stock for \$1,195,800 in proceeds. During 2021, Budde was paid  
6 \$119,167 in director fees and stock awards.

7 30. Defendant H. Benjamin Samuels has been a director since December 2015. While  
8 in possession of material, nonpublic information concerning Workhorse's true business  
9 condition, Samuels sold over 1 million shares of his stock for proceeds of \$24.4 million. During  
10 2021, Samuels was paid \$119,167 in director fees and stock awards.

11 31. Defendant Harry DeMott has been a director since September 2016. While in  
12 possession of material, nonpublic information concerning Workhorse's true business condition,  
13 DeMott sold over 112,000 shares of his stock for proceeds of over \$2.675 million. During 2021,  
14 DeMott was paid \$119,167 in director fees and stock awards.

15 32. Defendant Michael Clark has been a director since October 2018. During 2021,  
16 Clark was paid \$119,167 in director fees and stock awards.

17 33. Defendant Pamela Mader has been a director since May 2020. While in  
18 possession of material, nonpublic information concerning Workhorse's true business condition,  
19 Mader sold 8,000 shares of her stock for \$240,000 in proceeds. During 2021, Mader was paid  
20 \$119,167 in director fees and stock awards.

21 34. Defendant Jacqueline Dedo has been a director since May 2020. During 2021,  
22 Dedo was paid \$119,167 in director fees and stock awards.

23 35. The individuals named in paragraphs 22 through 34 herein are sometimes  
24 collectively referred to herein as the "Individual Defendants."

### 25 **DIRECTOR AND OFFICER DUTIES**

26 36. By reason of their positions as officers, directors, and fiduciaries of Workhorse  
27 and because of their ability to control its affairs, each of the Individual Defendants owed  
28 Workhorse and its shareholders fiduciary duties of care and loyalty in the management and

1 administration of Workhorse's affairs, as well as in the use and preservation of Workhorse's  
2 property and assets.

3 37. As such, they were required to act in furtherance of the best interests of  
4 Workhorse and its shareholders and prohibited from engaging in self-dealing and unlawful  
5 corporate conduct, such as violations of the laws applicable to Workhorse and its business.

6 38. As officers and/or directors of a publicly held company, the Individual  
7 Defendants had a duty to promptly disseminate complete, accurate, and truthful information  
8 regarding Workhorse's business, operations, management, and corporate conduct so that the  
9 market price of Workhorse stock would be based on truthful and accurate information.

10 39. The Individual Defendants, because of their positions of control and authority as  
11 directors and/or officers of Workhorse, were able to and did, directly and/or indirectly, exercise  
12 control over the wrongful acts complained of herein.

13 40. The misconduct of the Individual Defendants involves a culpable violation of  
14 their obligations, the absence of good faith on their part, and a reckless disregard for the fiduciary  
15 duties owed to Workhorse and its shareholders, which they were aware or should have been  
16 aware posed a risk of serious injury to Workhorse.

17 41. At all relevant times, each Individual Defendant was the agent of each other and  
18 of Workhorse, and was acting within the course and scope of such agency.

19 42. In addition to these duties, the directors who served on the Audit Committee owed  
20 specific duties to Workhorse to assist the Board in overseeing "the Company's accounting and  
21 financial reporting processes...." The Audit Committee's Charter provides:

22 **Audited Financial Statements**

23 []Review and Discussion. The Audit Committee shall review and discuss with the  
24 Company's management and independent auditor the Company's audited financial  
25 statements, including the matters about which Statement on Auditing Standards No.  
61 (Codification of Statements on Auditing Standards, AU §380) requires discussion.

26 []Recommendation to Board Regarding Financial Statements. The Audit Committee  
27 shall consider whether it will recommend to the Board that the Company's audited  
28 financial statements be included in the Company's Annual Report on Form 10-K.



1        []Audit Committee Report. The Audit Committee shall prepare an annual committee  
 2        report for inclusion where necessary in the proxy statement of the Company relating  
 3        to its annual meeting of security holders.

### 4        **Review of Other Financial Disclosures**

5        []Independent Auditor Review of Interim Financial Statements. The Audit Committee  
 6        shall direct the independent auditor to use its best efforts to perform all reviews of  
 7        interim financial information prior to disclosure by the Company of such information  
 8        and to discuss promptly with the Audit Committee and the Chief Financial Officer  
 9        any matters identified in connection with the auditor's review of interim financial  
 10       information which are required to be discussed by applicable auditing standards. The  
 11       Audit Committee shall direct management to advise the Audit Committee in the event  
 12       that the Company proposes to disclose interim financial information prior to  
 13       completion of the independent auditor's review of interim financial information.

### 14       **Controls and Procedures**

15       []Oversight. The Audit Committee shall coordinate the Board's oversight of the  
 16       Company's internal control over financial reporting, disclosure controls and  
 17       procedures and code of conduct. The Audit Committee shall receive and review the  
 18       reports of the CEO and CFO required by Rule 13a-14 of the Exchange Act.

## 19       **RELEVANT FACTUAL ALLEGATIONS**

### 20       **A. Background of the Company and the USPS Contract.**

21       43.      Workhorse manufactures electric delivery vans and software for the "last-mile"  
 22       delivery sector — the last step of the delivery process where goods are transported by small or  
 23       medium sized trucks from the distribution center to their final destination.

24       44.      Workhorse was founded in 1998 as a chassis manufacturer. A chassis is the load-  
 25       bearing framework of a motor vehicle. In 2005, Workhorse was acquired by Navistar  
 26       International ("Navistar"), a manufacturer of trucks and diesel engines. By 2011, however,  
 27       Workhorse's business faltered and its manufacturing facility was shut down.

28       45.      Meanwhile, AMP Electric Vehicles ("AMP"), a vehicle electrification company  
 established in 2007, worked with Navistar to electrify a 1,000-cubic foot delivery van. Although  
 the development agreement between Navistar and AMP was never fulfilled. AMP later acquired  
 Workhorse's assets and renamed itself Workhorse.

1           46.     On January 20, 2015, the USPS publicly announced its Next Generation Delivery  
2     Vehicle (NGDV) Acquisition Program with the issuance of a Request for Information (RFI)  
3     open to all interested suppliers. The NGDV program commenced a multi-year bidding process  
4     in which one or more suppliers would be awarded a multi-billion dollar contract to design and  
5     manufacture up to 165,000 new USPS mail delivery vehicles.

6           47.     The NGDV contract was an indefinite delivery, indefinite quantity (“IDIQ”)  
7     contract, which allows the USPS to order more NGDVs over the contract period. The goal of the  
8     NGDV program was to begin replacing USPS’s 215,000 vehicles, many of which were  
9     encountering breakdowns and heightened maintenance costs due to the fleet’s age.

10          48.     On March 6, 2015, Workhorse was one of 34 companies to submit a proposal in  
11     response to the NGDV program. Non-party Burns, then-CEO of Workhorse, stated in a March  
12     12, 2015 press release:

13                   We believe our approach to the NGDV could help the USPS reduce  
14                   operating costs and increase efficiency as they move toward larger  
15                   vehicles that can accommodate both mail and packages. The heavy stop-  
16                   and-go nature of mail and package delivery, combined with the limited  
17                   miles traveled per day, are ideal for our electric Workhorse truck.  
18                   Additionally, our optional integrated HorseFly package delivery drone is  
19                   designed to increase the number of packages that a truck can deliver in a  
20                   day. Our technology has the potential to make the USPS the greenest,  
21                   most efficient delivery fleet in the world while giving it the advantages it  
22                   needs to improve its bottom line. With a one-time replacement of the  
23                   largest fleet in the world, the USPS has a unique opportunity to redefine  
24                   how delivery trucks operate and how they affect the air we breathe.

25          49.     Workhorse was one of 15 firms to make it past the initial review and into the first  
26     round of the USPS bidding process. However, Workhorse was soon rejected chiefly because it  
27     continued to create designs using AutoCAD software, even though USPS required bidders to  
28     submit designs using design software named SolidWorks.

            50.     A company named VT Hackney, however, was selected as one of six prime  
suppliers to move on to the prototype development phase of the NGDV bidding process. Upon  
receiving the bid, VT Hackney CEO Mike Tucker said in a press release:

1 We are excited to have been selected by the USPS as a bidder for building  
2 prototypes of the new design. As an independent truck body builder we  
3 are not constrained to any particular chassis and are able to select the best  
4 solution for the Postal Service's Next Generation Delivery Vehicle.  
5 Leveraging our 60 years of experience in unique and advanced storage  
6 and transport systems we are developing an advanced vehicle concept to  
7 meet the future needs of the USPS.

8 51. The six selected suppliers each received a portion of \$37 million to produce fully-  
9 operative prototypes that adhered to USPS's emissions and fuel economy, ergonomics,  
10 aesthetics, handling, and durability requirements. The prototypes were to represent various  
11 supplier ideas and driving configurations, and at least half of them had to feature hybrid and  
12 cutting-edge technologies such as alternative fuel capabilities.

13 52. Each supplier was permitted to subcontract additional suppliers in order to  
14 develop its finished prototypes. In preparation to fulfill the prototype contract, VT Hackney  
15 subcontracted Workhorse to work on the USPS bid, although VT Hackney held the position as  
16 the primary contract bidder. VT Hackney is part of a large publicly traded aerospace, electronics,  
17 land systems, and marine company headquartered in Singapore.

18 53. On September 22, 2016, Workhorse distributed a press release stating that the  
19 "exclusive" VT Hackney-Workhorse partnership had "been selected as one of six manufacturers  
20 awarded a prototype contract by the United States Postal Service (USPS) to build and deliver  
21 prototype vehicles for the Next Generation Delivery Vehicle (NGDV) Program." Workhorse  
22 added that it would provide the chassis and powertrain for the prototype vehicles, while VT  
23 Hackney would build the body.

24 54. According to the USPS's solicitation materials, USPS would evaluate each  
25 proposal weighing its "total cost of ownership, technical evaluation results, and risk" to  
26 determine the "best value" to USPS.

27 55. "Total Cost of Ownership" included consideration of factors such as acquisition  
28 costs, maintenance costs, and fuel costs. The "Technical Evaluation Factors" included "Design  
Quality and Technical Approach, Supplier Capability, and Past Performance, each of which  
comprised multiple subfactors."

1           56.     In September 2017, VT Hackney and Workhorse jointly submitted six prototype  
2 vehicles for NGDV testing. However, according to the Fuzzy Panda Report, VT Hackney needed  
3 to enlist Detroit-based engineering company Prefix Corporation to finish the prototypes because  
4 Workhorse was incapable of doing the work itself.

5           57.     The prototypes fared poorly in testing. According to the Fuzzy Panda Report,  
6 “some of the more notable failures were their EV prototype ran out of range and got stranded on  
7 a road; suspension broke when hitting railroad tracks; chassis performance problems; extensive  
8 door failures; safety belt failures; motor failures; ran out of power on multiple occasions; and the  
9 parking brake failure that injured a USPS employee. . . .”

10          58.     VT Hackney subsequently decided to drop out of the project. On November 6,  
11 2019, Workhorse announced that it had purchased VT Hackney’s right to bid on the contract for  
12 approximately \$7 million, and would be proceeding with the project.

13          59.     After the prototype testing phase completed in December 2019, the USPS  
14 commenced the next contract phase by publishing a request for proposals for the production of  
15 the NGDV vehicles. All contractors who had completed prototype testing – regardless of testing  
16 results – were eligible to submit proposals, which were due on July 14, 2020.

17          60.     On September 3, 2020, less than two months after Workhorse submitted its  
18 proposal, USPS Contracting Officer Delores B. Waters sent Workhorse a “Deficiency List”  
19 identifying various “weaknesses” in Workhorse’s proposal, adding that the list was only  
20 representative of some of the problems, as it “indicated there were additional, unstated issues.”  
21 The USPS’s Deficiency list required Workhorse to submit a Deficiency Response, which it sent  
22 on September 25, 2020.

23          61.     On October 8, 2021, Workhorse representatives were invited to discuss the  
24 problems with its submission. On October 21, 2020, Waters sent another email to Workhorse  
25 identifying yet more issues related to Workhorse’s proposal. The USPS inquiry required  
26 Workhorse to submit a response on October 28, 2020 to attempt to address these issues.

27          62.     On January 25, 2021, President Joe Biden announced his goal to replace the  
28 government’s vehicle fleet with electric vehicles assembled in the United States. Thereafter,

1 Schrader conducted several interviews in which he suggested that President Biden's  
2 announcement was an indication that Workhorse was in an ideal position to be awarded the  
3 USPS NGDV contract. Schrader stated: "It's positive what we're seeing from the administration.  
4 President Biden, you know, just five days into his presidency has kind of pushed electric vehicles  
5 for all government agencies."

6 63. On January 26, 2021, Workhorse tweeted "Thank you President Biden for your  
7 continued support for American-made Electric Vehicles. #workhorsegroup."

8 64. However, on February 23, 2021, USPS announced via press release that it was  
9 awarding the entire NGDV contract to Oshkosh Defense ("Oshkosh"). The press release stated  
10 that "[t]he vehicles will be equipped with either fuel-efficient internal combustion engines or  
11 battery electric powertrains and can be retrofitted to keep pace with advances in electric vehicle  
12 technologies." The press release did not mention Workhorse.

13 65. On February 24, 2021, Workhorse published a press release entitled "Workhorse  
14 Provides Corporate Update." The press release stated:

15 On February 23, 2021 the USPS issued a press release announcing that it  
16 has made an award under the NGDV contract to a competing finalist....  
17 After being informed of the USPS decision, the Company has requested,  
18 pursuant to the bid process rules, additional information from the USPS  
19 and is awaiting a response at this time. The Company intends to explore  
all avenues that are available to non-awarded finalists in a government  
bidding process.

20 66. On June 16, 2021, Workhorse filed a complaint in the U.S. Court of Federal  
21 Claims against the USPS, challenging the USPS's decision to award the contract to Oshkosh.  
22 The complaint alleged that the USPS's actions with respect to procurement of the NGDV  
23 contract were "arbitrary, capricious, and without rational basis."

24 67. The Workhorse complaint acknowledged that the USPS cited numerous reasons  
25 that USPS "would never have selected [Workhorse's NGDV] for its flagship vehicle[,] the  
26 "posterchild" of which was a "roll-away incident[,] in which "a flaw in Workhorse's parking  
27 brake system caused Workhorse's prototype vehicle to roll down an incline and into a ditch,"  
28

1 resulting in the hospitalization of a USPS driver. Notably, this is the same incident identified in  
2 the Fuzzy Panda Report.

3 68. Although filled with broadsides against the USPS, Workhorse’s complaint further  
4 conceded that on at least two occasions, the USPS had informed the Company of various “areas  
5 of deficiency,” and had provided a “Deficiency List” that “identified issues” with Workhorse’s  
6 proposal, including questions regarding the Company’s “prior performance,” “Workhorse’s  
7 ability to manufacture efficient and sustainable all-electric vehicles for large-scale commercial  
8 delivery[,]” and the “production capabilities of Workhorse’s leadership and partners[.]”

9 69. According to Workhorse’s complaint, when the Company first challenged the  
10 USPS’s award to Oshkosh by written submission, the USPS responded with “a lengthy screed  
11 aggressively attacking Workhorse,” and its “lack of credibility and candor with the Federal  
12 government.” In addition, according to the Workhorse complaint, the USPS “castigated  
13 Workhorse” for its public statements related to the Company’s “participation in the NGDV  
14 program” despite the Company having signed a strict non-disclosure agreement.

15 70. Notably, some of the information disclosed in Workhorse’s lawsuit echoes facts  
16 uncovered by Fuzzy Panda in its October 8, 2020 report, wherein Fuzzy Panda disclosed the  
17 results of visits to Workhorse’s manufacturing facilities by its investigators:

18 NO Active purchase orders being worked on. Employees told us told that  
19 no purchase orders were currently in production for customers

20 “Show Units” – Employees at Union City, where 4 UPS branded trucks  
21 were parked behind dumpsters, referred to the units as “show units” and  
“prototypes”

22 NO Automation – All production at the facility still occurs MANUALLY  
23 without a sophisticated assembly line or any automation in place

24 NO Security – Workhorse employees invited us into both Union City  
25 Assembly Plant and the “secure” area of their Loveland R&D facility.  
They even let us photograph their old engine

26 All truck production and assembly occurs exclusively in Union City; the  
27 Union City plant is Workhorse’s only production line and it is badly in  
28 need of additional capex investment

1           71. The Fuzzy Panda Report contained information purporting to reflect  
2 conversations with Workhorse employees at its manufacturing facilities, again consistent with  
3 USPS concerns with Workhorse:

4                   **Union City, Indiana – September 2020 Investigator invited inside**  
5                   **Assembly Line Plant**

6                   Investigator: Are those trucks for a particular customer?

7                   Employee: No, those are just show units

8                   Investigator: What does that mean like they are prototypes?

9                   Employee: Yeah, they're not production

10                  Investigator: Are you making any production units for customers right  
11 now?

12                  Employee: No, not right now

13                  Investigator: Is this the only facility where you make units or if there's  
14 another one on site?

15                  Employee: No, this is the only production line

16                  Investigator: How many of them they do make in a week or a month?

17                  Employee: These are just the show units so they're not really doing that

18                   **Loveland, Ohio – September 2020 Investigator Conversation within**  
19                   **R&D facility:**

20                  Employee: ... really most of the production line is in Union City.

21                  Investigator: Is it manual or automated? Here looks like everything is  
22 manual?

23                  Employee: Here [Loveland] it's all manual, but there [Union City] it's all  
24 in a production line

25                  Investigator: So there's automation there?

26                  Employee: No, it's still manual, but it's more of a process there, here is  
27 more R&D.

28           72. Workhorse filed a voluntary dismissal of its claim against the USPS on  
September 14, 2021, marking an apparent end to its pursuit of the USPS contract.



**B. The Company's Other Purported Contracts.**

73. Meanwhile, throughout the period that Workhorse was vying for the NGDV contract, the Individual Defendants were attempting to create the impression that Workhorse was an established company, including that it had signed material contracts and was capable of setting and meeting mass production targets of hundreds of vehicles per year.

74. In 2018, Workhorse announced an agreement with United Parcel Service, Inc. ("UPS") for 1,000 all-electric package delivery vehicles. However, it is unclear what portion of this contract, if any, has been delivered or will be delivered, beyond a phase one production of 50 prototypes. In addition, a report published by UPS in 2019 indicated that UPS had placed an order for 10,000 EVs from a different manufacturer altogether.

75. Nevertheless, Workhorse continued to tout its relationship with UPS in public statements. For example, on a May 6, 2020 earnings call, Schrader stated: "we have the backlog out there in the first place with UPS... we're seeing customers very positive about our trucks and it's more, how soon can we get them." And on a November 9, 2020 earnings call, Hughes stated: "UPS remains our premier customer, if you will, because they have been along with us for the longest time, they collaborated with us on this C-Series design... So we feel strong. We are happy where we are with UPS. We will be delivering new vehicles. And the real key for them is us [delivering] a high-quality vehicle over and over again, right?... So the first vehicle we deliver them, we want to hit it out of the park, and we want to make sure it is right."

76. In reality, from the outset and pursuant to the terms of the contract with UPS, the balance of the contract for 950 vehicles would occur "on a timeframe decided by Buyer at Buyer's sole discretion." In addition, UPS could "determine, at its sole discretion, the level of success of the 50 Vehicle test" and had the power to "reduce the quantity of the balance of the Order (or cancel the balance of the Order) depending on the level of success achieved during the phase 1 testing, as determined in Buyer's sole discretion."

77. Likewise, on July 23, 2020, Workhorse published a press release that it had secured an order of 20 trucks from a "newly launched" electronic vehicle start-up named eTrucks. There is scant public information available regarding eTrucks and there is no evidence



1 that eTrucks has taken delivery of or paid for the 20 trucks mentioned in the July 23, 2020 press  
2 release.

3 78. Similarly, on November 9, 2020, Workhorse announced that it had received a  
4 new purchase order of 500 trucks from Pritchard Companies, and on January 4, 2021, Workhorse  
5 announced that it had “received a purchase order for 6,320 C-Series all-electric delivery vehicles  
6 from Pride Group Enterprises.” However, indications are that these orders are not firm  
7 commitments, and even the Company’s most recent Form 10-K, filed on March 1, 2022, fails to  
8 provide meaningful information regarding these purported contracts.

9 79. It is apparent that Workhorse management decided to showcase these purported  
10 contracts in their discussions with analysts, notwithstanding their contingent nature. For  
11 example, on May 28, 2020, an analyst from Dougherty & Company stated: “Certain large,  
12 national customers such as UPS engage directly with WKHS for larger orders; these large fleets  
13 typically have their own set of depots and staff for service functions... Our discussions with  
14 WKHS’s management suggest that the company has approximately 1,200 vehicle orders in its  
15 backlog; most are for the C1000 model and are intended for delivery to UPS.” In this fashion,  
16 the Individual Defendants were able to create a public narrative about the Company’s prospects  
17 for success.

18 80. The Individual Defendants also publicly set aggressive vehicle production targets  
19 to show they were capable of delivering on their contracts. In a press release dated March 10,  
20 2020 concerning the Company’s fourth quarter and full year 2019 financial results, the Company  
21 stated that it had “[e]stablished a production and delivery target of 300-400 vehicles in 2020.”  
22 In the press release, Hughes stated:

23 We also made meaningful progress in our transition from a development-  
24 stage company to a production-focused enterprise.... While our intent had  
25 been to deliver initial vehicles in the first quarter of 2020, we were  
26 impeded by material supply disruptions related to the global outbreak of  
27 the novel coronavirus. Despite these near-term headwinds, we are setting  
28 a 2020 production target of 300-400 vehicles and are looking forward to  
delivering our state-of-the-art truck to our customers.

1           81.     Similarly, on May 6, 2020, the Individual Defendants caused the Company to  
2     issue a press release reporting first quarter 2020 financial results. Included as a “Highlight” was  
3     the statement that Workhorse “[r]eaffirmed previous production and delivery target of 300-400  
4     vehicles in 2020.” Hughes stated the following:

5                     We will be delivering our C-Series vehicles to customers in the second  
6                     quarter, and we remain on schedule to achieve our target of delivering  
7                     300 to 400 vehicles by the end of this year. To that end, we are in the final  
8                     stage of preparing a detailed production plan of when we can deploy  
9                     vehicles into Ryder Systems’ sales channel starting in 2020 and into  
10                    2021.

11           82.     In an interview on July 24, 2020, Schrader stated: “We are actually making, um,  
12     actually making trucks right now at our Union City, Indiana plant, um, and, uh, and we plan to  
13     make 300-400 this year.”

14           83.     A press release published by Workhorse on August 10, 2020 stated that the  
15     Company “reaffirmed previous production and delivery target of 300-400 vehicles in 2020.”

16           84.     In an earnings call on August 10, 2020, Schrader stated: “the vast majority of our  
17     300 to 400 vehicle production target would be manufactured and delivered by the end of the  
18     fourth quarter of this year” and Hughes stated that the Company was developing an assembly  
19     plan in order to “deliver our target vehicle production of 300 to 400 units later, with a vast  
20     majority coming in the fourth quarter.”

21           85.     Similarly, on October 15, 2020, Schrader stated:

22                     Right now we’ve delivered, you know, a handful of vehicles out there but  
23                     we have a plan to build and manufacture and deliver 300-400 this year,  
24                     and most of those will come in this quarter right now, and then continue  
25                     that to maybe 200 a month or so next year.

26           86.     And in an October 29, 2020 interview, Schrader stated: “we’ve got everything in  
27     place right now, so we’ve got the labor and materials coming in, and from our standpoint we still  
28     have the 300-400 that we have out there, and that’s our goal.”

          87.     Remarkably, in an earnings call on November 9, 2020, Hughes set an *even larger*  
production target of 1,800 trucks in 2021. Hughes stated: “we would anticipate producing 1,800

1 units in 2021” and Schrader elaborated: “I think you could look at it as getting to 100 trucks per  
2 month by the - no little later than the first quarter of 2021 and then getting to 200 trucks a month  
3 by no later than the second quarter of 2021.”

4 88. As late as January 28, 2021, in another interview, Schrader stated: “our goal, our  
5 milestone still is to try to have, you know, try to get to 5 a day sometime in March, by the end  
6 of the first quarter, okay? Um, and then ten a day sometime by the end of the second quarter.  
7 You know, so those are our milestones, and hopefully we hit those, um, but that’s again if we hit  
8 those then we should be on target for our 1,800 for this year.” Workhorse made these statements  
9 about its purported production volume even though there was no customer even available or  
10 required to purchase the vehicles.

11 89. Just a few months later, and after massive sales of stock by officers and directors  
12 at prices inflated by their bullish statements about Workhorse’s purported contracts and  
13 production goals, on May 10, 2021, the truth was revealed when Workhorse announced that it  
14 had only delivered six trucks in the first quarter 2021 and had only produced 38 trucks so far that  
15 year, demonstrating that the 1,800 truck target announced just a few months before was wildly  
16 off-base. On this news, the price of Workhorse stock dropped to a low of \$8.20 per share.

17 90. In July 2021, Workhorse announced that CEO Hughes had left the Company. In  
18 September 2021, Workhorse announced it would halt production and deliveries of its flagship  
19 C-1000 electric truck, saying more tests and modifications were needed to ensure it complied  
20 with regulatory standards. It also said it would *recall* the 41 vans it had delivered in 2021, further  
21 demonstrating that claims of 300-400 units for fiscal year 2020 (and 1,800 for fiscal year 2021)  
22 had been totally unfounded. It was also announced that CFO Schrader and COO Willison had  
23 left the Company.

24 91. In sum, through their material misrepresentations, the Individual Defendants  
25 misled shareholders and investors to believe that Workhorse had moved beyond the research and  
26 development phase of the Company and into mass production, that the Company had a steady  
27 backlog and demand for their product, and that there was a strong possibility Workhorse would  
28 be granted all or part of the USPS contract, none of which representations were true.

92. Workhorse stock currently trades at approximately \$3 per share.

**C. The Securities Class Action.**

93. In the December 2, 2021 Order Denying in Substantial Part Defendants’ Motion to Dismiss in the securities class action, Judge Carney sustained allegations that during the period March 10, 2020 through May 10, 2021, Workhorse and its senior management made false and misleading statements to investors with intent to defraud. The allegations in the securities class action were supported by the first-hand accounts of several confidential witnesses (“CWs”) who apparently provided information to counsel for the plaintiffs.

94. Judge Carney held as follows regarding allegations that the Workhorse defendants made false and misleading statements about the USPS contract:

Plaintiff plausibly alleges sufficient facts indicating that Defendants could not have genuinely or reasonably believed that Workhorse had a real chance at securing the USPS contract, or that Defendants were aware of undisclosed facts tending to seriously undermine their ability to secure that contract. (*See* FAC ¶¶ 109, 252, 262.)

First, Plaintiff alleges that an undisclosed parking brake failure during prototype testing caused Workhorse’s prototype vehicle to roll down an incline and into a ditch, resulting in the hospitalization of a USPS driver who was forced to jump from the runaway vehicle. (*Id.* ¶¶ 8, 14, 51–52, 111, 291.)

Second, Plaintiff alleges that Defendants knew Workhorse was not capable of producing trucks on the scale required to win the contract. (*Id.* ¶¶ 13, 37 [noting that Workhorse’s production facility “has no automation or assembly line capabilities that one would traditionally expect to find in a factory”], 53, 101–02, 264.) Indeed, a confidential witness (“CW2”) stated that Workhorse’s claims that it would be able to produce 300–400 trucks by the end of 2020 was an “absolute lie,” as there was “no way” Workhorse would have been able to meet this target because there was “no automation, zero automation.” (*Id.* ¶¶ 96, 104.)

Third, Plaintiff alleges that on September 3, 2020, USPS sent Workhorse an undisclosed “deficiency list” identifying various “questions and weaknesses” with Workhorse’s proposal, with questions regarding its “prior performance” including the “roll-away incident,” its “ability to manufacture efficient and sustainable all-electric vehicles for large-scale commercial delivery,” its “production capabilities,” and its “cost breakdown.” (*Id.* ¶¶ 14–15, 54, 238, 252, 262.)

1 And fourth, Plaintiff alleges that on October 21, 2020, USPS sent  
2 Workhorse another email with another list of issues related to  
3 Workhorse's proposal. (*Id.* ¶¶ 55, 238, 252, 262.) Taking all of these  
4 alleged facts together, Plaintiff plausibly alleges that Defendants'  
statements, as late as October 29, 2020, indicating optimism regarding  
the USPS contract were materially misleading.

5 95. Judge Carney further sustained allegations that the Workhorse defendants made  
6 false and misleading statements regarding the Company's manufacturing capability:

7 Plaintiff alleges that Workhorse produced only 7 trucks in the third  
8 quarter of 2020, 18 trucks for the whole year of 2020, and 38 trucks year-  
9 to-date by May 10, 2021. (*Id.* ¶¶ 13, 106, 114, 278.) Despite these low  
10 numbers, Workhorse claimed over and over that it would be able to  
11 produce 300-400 trucks by the end of 2020. (*Id.* ¶¶ 104, 125-28.) As  
12 explained, CW2 stated that this claim was an "absolute lie," as there was  
13 "no way" Workhorse would have been able to meet this target because  
14 there was "no automation." (*Id.* ¶ 104; *see id.* ¶¶ 99-100.) Indeed,  
15 "[w]orkers assembled vehicles one at a time on wooden workbenches  
16 using basic hand tools that could be purchased at any hardware store."  
17 (*Id.* ¶ 127; *see id.* ¶ 95.) When asked if there was a timeline for hiring the  
workers necessary to increase production, CW2 responded, "hell no," and  
even if there had been, Workhorse had "no cash flow" with which to  
perform such hiring. (*Id.* ¶¶ 96, 127.)

18 \* \* \*

19 Plaintiff plausibly alleges that the statements regarding Workhorse's  
20 manufacturing capabilities were not accompanied by meaningful  
21 cautionary language and that Defendants had actual knowledge that their  
22 statements regarding manufacturing capability were false or misleading.  
23 *See id.* Specifically, Plaintiff alleges that based on Workhorse's  
24 production numbers up to that time, and the unautomated state of their  
25 manufacturing facility, Defendants knew that there was absolutely no  
26 way Workhorse could possibly have met the stated projections. Indeed,  
27 Plaintiff alleges that Hughes stated on a March 10, 2020 investor call that  
28 as of that day, Workhorse could produce 2 trucks per day, and hoped to  
increase that number to 5 and then 10 trucks per day. (FAC ¶ 162.) By  
May 6, 2020, Hughes stated that Workhorse was still working at a rate of  
2 trucks per day. (*Id.* ¶ 181.) Nevertheless, Schrader was assuring the  
public that Workhorse was on track to meet its 300-400 vehicle target as  
late as October 29, 2020, at a time when fewer than 18 trucks had been  
made that year. (*Id.* ¶¶ 114, 126, 278).

Plaintiff challenges Defendants’ false representations that Workhorse had a “backlog” of vehicle orders, which created the illusion of firm customer orders when they were really non-binding expressions of interest. (FAC ¶ 89.) For example, Plaintiff alleges that Hughes told an analyst on March 10, 2020 that UPS “had 1,060 units on order that we are beginning to deliver in anticipation in late Q2 or Q3 this year,” even though he knew that Workhorse did not have the capacity to produce that many vehicles, and that UPS had not actually requested delivery of the vehicles. (*Id.* ¶¶ 142, 166–67.) Similarly, Plaintiff alleges that on March 1, 2021, Workhorse announced that it received a purchase order for 6,320 C-Series all-electric delivery vehicles from Pride Group Enterprises, raising the backlog to 8,000 vehicles. (*Id.* ¶¶ 281–82.)

\* \* \*

97. Claims for securities fraud were sustained against the Company's entire senior management at the time – its CEO (Hughes), CFO (Schrader), COO (Willison) and Principal Accounting Officer (Ackerman), in addition to the Company itself.

21

## PROXY VIOLATIONS

99. On August 10, 2020, the Company filed its Schedule 14A with the SEC (the “Proxy Statement”) in connection with the September 21, 2020 shareholder meeting. Defendants Hughes, Chess, Budde, Samuels, DeMott, and Clark issued the Proxy Statement, filed pursuant to Section 14(a) of the Securities Exchange Act.

100. The Proxy Statement called for shareholders to approve: (1) the election of eight directors; (2) the issuance of certain shares and related transactions; and (3) the ratification of the Company’s independent auditor for the fiscal year ending December 31, 2020.

101. As with other statements made by the Individual Defendants during the relevant period, the Proxy Statement failed to disclose that (1) Workhorse was not truly competitive in the NGDV process, given the known, numerous, and largely unaddressed issues with its business and operations; (2) Workhorse did not, and would not, at any foreseeable time have the manufacturing capacity to produce anywhere near 300–400 vehicles by the end of 2020; and (3) the supposed orders in the Company’s backlog from various third parties did not represent binding commitments to purchase vehicles, but rather were largely conditional.

102. The Proxy Statement also failed to disclose (1) deficiencies in Workhorse’s disclosure controls that were known to the Board when the Proxy Statement was filed; and (2) disclosure violations known to the Board caused by these deficiencies.

103. As a direct and proximate result of this wrongful conduct, Workhorse misled or deceived its stockholders by making misleading statements that were an essential link in stockholders heeding Workhorse’s recommendation to re-elect certain of its directors.

## DAMAGES TO THE COMPANY

104. As alleged herein, securities class action litigation was filed against Workhorse and its officers and directors, and Judge Carney denied in substantial part the motions to dismiss the asserted claims.

105. The Individual Defendants’ conduct has not only caused a massive decline in shareholder value, but has also exposed Workhorse to huge liability to stock purchasers, including huge defense costs.







<i>Name</i>	<i>Number of Shares</i>	<i>Proceeds</i>
Ackerson	39,850	\$965,000.00
Budde	60,000	\$1,195,800.00
Chess	68,218	\$1,428,218.48
DeMott	112,450	\$2,675,904.00
Fleming	304,796	\$6,614,781.05
Furey	201,862	\$4,407,915.04
Hughes	568,502	\$14,399,122.23
Mader	8,000	\$240,000.00
Samuels	1,099,994	\$24,477,884.93
Schrader	15,152	\$332,131.84
Willison	169,920	\$4,825,492.80
<i>Totals</i>	<b>2,648,744</b>	<b>\$61,562,250.37</b>

#### DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

112. Workhorse is named as a nominal defendant solely in a derivative capacity.

113. Plaintiffs will adequately and fairly represent the interests of Workhorse in enforcing and prosecuting its rights and have hired experienced counsel.

114. Plaintiffs were shareholders at the time of the wrongdoing, have continuously been shareholders since that time, and are currently shareholders.

115. Workhorse is controlled by its board of directors, which at the time this action was commenced, consisted of ten (10) members, seven (7) of whom are named as defendants herein. Plaintiff has not made a pre-suit demand on the Workhorse board to institute this action, because such a demand would be a futile and useless act, and therefore, is excused.

116. Demand is excused on non-party director Richard “Rick” Dauch because he is not independent. In its proxy filings with the SEC, Workhorse concedes that Dauch lacks independence as that term is defined in the Nasdaq listing standards. As CEO of Workhorse,

1 Dauch earns a material portion of his livelihood from his employment at Workhorse, having  
2 earned \$1 million in salary and \$1.25 million in bonus for fiscal year 2021. He would never  
3 jeopardize these material sums by taking action against directors who control his employment  
4 and his compensation.

5 117. Defendants Chess, DeMott, Samuels, Budde, Clark, Dedo and Mader (7 out of  
6 10) breached their fiduciary duties of loyalty by causing or allowing improper statements to be  
7 made by Workhorse during the relevant period concerning (a) the Company's ability to compete  
8 for the USPS contract, (b) its actual manufacturing capabilities, and (c) its purported backlog of  
9 orders from other contracts. These defendants face a substantial likelihood of liability for  
10 disclosure violations in breach of their fiduciary duty of loyalty.

11 118. Defendants Chess, DeMott, Samuels, Budde, and Mader (5 out of 10) all  
12 possessed material, nonpublic information and used that information to benefit themselves by  
13 selling their personally held Workhorse stock, in the amounts as detailed above.

14 119. These defendants personally enriched themselves by using and/or  
15 misappropriating inside information that belonged to the Company. These defendants face a  
16 substantial likelihood of liability for insider trading in breach of their fiduciary duty of loyalty,  
17 and demand is therefore excused.

18 120. Defendants Chess, Samuels, Dedo, Budde and Clark (5 out of 10), as members  
19 of the Audit Committee at relevant times, were charged with overseeing the Company's  
20 reporting process, including the oversight of "the Company's internal control over financial  
21 reporting, disclosure controls and procedures and code of conduct."

22 121. Nevertheless, these defendants permitted and/or failed to correct false statements  
23 about the allegedly transformative USPS contract and the true state of the Company's production  
24 capacity and order backlog, in breach of their fiduciary duties.

25 122. The pendency of the securities class action claims for violating the federal  
26 securities laws renders it impossible for each of the current director defendants to objectively  
27 and impartially consider a stockholder demand as to the wrongdoing alleged herein.  
28

123. None of the directors could in good faith pursue the Company's claims while defending themselves against claims in another case based on similar facts, and which expose them personally to massive class action liability.

124. If the Company pressed forward with its rights of action in this case, then the Company's efforts would undercut or even compromise the defense and settlement of the securities class action, making demand futile.

### **Count I**

#### **Breach of Fiduciary Duty**

125. Plaintiffs incorporate by reference and realleges each and every allegation set forth above, as though fully set forth herein.

126. The Individual Defendants, as current or former Workhorse officers and/or directors, owe (or owed) the Company the fiduciary duties of due care and loyalty.

127. By virtue of their positions as Workhorse directors and/or officers, these Individual Defendants at all relevant times had the power to (and did) control, influence, and cause the Company to engage in the practices complained of herein, including the false and misleading statements alleged herein.

128. Each Individual Defendant was required to: (a) use his or her ability to control and manage Workhorse in a fair, just, and equitable manner; and (b) act in furtherance of the best interests of Workhorse rather than his or her own interests.

129. By their acts alleged herein, including but not limited to causing Workhorse to issue false and misleading statements while concealing material adverse information and engaging in unlawful insider trading in Workhorse stock, the Individual Defendants each breached their fiduciary duties.

130. In addition, certain of the Individual Defendants engaged in unlawful insider sales of Workhorse stock while in possession of material adverse information.

131. The Individual Defendants acted in bad faith and violated their fiduciary duties of care and loyalty owed to the Company.

132. Workhorse has been injured by reason of the Individual Defendants' conduct.

**Count II**

**Contribution and Indemnification**

**15 U.S.C. Section 78u-4(f)**

133. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

134. Certain of the Individual Defendants named in this Count are named as defendants in the related securities class action pending in the U.S. District Court for the Central District of California, captioned *Farrar v. Workhorse Group, Inc., et al.*, Case No. 2:21-cv-02072-CJC-PV (C.D. Cal.).

135. The conduct of these defendants has exposed the Company to significant liability under various federal securities laws by their disloyal acts.

136. The Company is alleged to be liable to private persons, entities, and/or classes by virtue of many of the same facts alleged herein.

137. If Workhorse is found liable for violating the federal securities laws, the Company's liability will arise in whole or in part from the intentional, knowing, or reckless acts or omission of all or some of the defendants as alleged herein, who have caused the Company to suffer substantial harm through their disloyal acts.

138. The Company is entitled to contribution and indemnification from these defendants in connection with all claims that have been, are, or may be asserted against the Company by virtue of their wrongdoing.

139. As officers, directors, and otherwise, defendants had the power to ability to, and did, control over influence, either directly or indirectly, Workhorse's general affairs, including the content of its public statements, and had the power or ability to directly or indirectly control or influence the specific corporate statements and conduct that violated Section 10(b) of the Exchange Act and SEC Rule 10b-5.

140. These defendants are liable under Section 21D of the Securities Exchange Act, 15 U.S.C. Section 78u-4(f), which governs the application of any private right of action for contribution asserted pursuant to the Securities Exchange Act of 1934.

**Count III**

**Unjust Enrichment**

141. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

142. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Workhorse.

143. Plaintiffs, as shareholders and representatives of Workhorse, seek restitution from these Individual Defendants, and each of them, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by these Individuals Defendants, and each of them, from their wrongful conduct and fiduciary breaches.

**Count IV**

**Proxy Violations**

**15 U.S.C. Section 78n(a)(1)**

144. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

145. Section 14(a) of the Securities Exchange Act, 15 U.S.C. § 78n(a)(1), provides that “[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title [15 U.S.C. § 78l].”

146. Rule 14a-9, promulgated pursuant to § 14(a) of the Securities Exchange Act, provides that no proxy statement shall contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

147. The Proxy Statement failed to disclose that the Company did not maintain sufficient internal controls to ensure that it made truthful and accurate statements to shareholders. The Proxy Statement was false and misleading when it discussed the Company's adherence to governance policies and procedures due to the Individual Defendants' failures to abide by them and issue false and misleading statements and/or omissions of material fact.

148. The misrepresentations and omissions were material to Plaintiffs in voting on the matters set forth for shareholder determination in the 2020 Proxy Statement.

149. The false and misleading elements of the Proxy Statement led to the election and/or re-election of Hughes, Chess, Budde, Samuels, DeMott, Clark, Mader, and Dedo, which allowed them to continue breaching their fiduciary duties to Workhorse.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of Workhorse, demand judgment as follows:

A. Against all Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' misconduct and breaches of fiduciary duties;

B. Directing Workhorse to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Workhorse and its shareholders from a repeat of the damaging events described herein, including, but not limited to, adopting corporate governance policies to:

(a) strengthen the Company's controls over disclosure and financial reporting;

(b) strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;

(c) strengthen Workhorse's oversight of its disclosure procedures; and

(d) prevent or undo self-dealing;

C. Determining and awarding Workhorse the damages it sustained as a result of the violations set forth above and restitution from the Individual Defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the Individual Defendants;

1 D. Granting extraordinary equitable and/or injunctive relief as permitted by law,  
2 equity, and state statutory provisions sued hereunder;

3 E. Determining and awarding Workhorse the damages sustained by it as a result of  
4 the Individual Defendants' breaches of fiduciary duties, as set forth above, from each of the  
5 Individual Defendants, jointly and severally, together with interest thereon; and

6 F. Awarding Plaintiffs the costs and disbursements of this action, including  
7 reasonable fees and costs to Plaintiffs' attorneys, accountants, and experts.

8 **JURY DEMAND**

9 Plaintiffs demands a trial by jury on all issues so triable.

10  
11 Dated: June 22, 2022

12 /s/ Martin Muckleroy

13 MARTIN MUCKLEROY

14 MUCKLEROY LUNT

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